

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY RICHARDSON,

Petitioner,

v.

CRIM. CASE NO. 06-CR-20676

CIVIL CASE NO. 09-11000

UNITED STATES OF AMERICA,

Respondent.

ORDER

- (1) GRANTING PETITIONER'S FEBRUARY 18, 2010 MOTION
TO REINSTATE 28 U.S.C. §2255 APPEAL RIGHTS**
**(2) DENYING PETITIONER'S MARCH 13, 2010 MOTION FOR
COMPLIANCE WITH F.R.CIV.P. 52**

BACKGROUND

On March 25, 2008, this Court sentenced Petitioner, pursuant to his Rule 11 plea agreement to a sentence of 25 years: 20 years under Count Two – possession with intent to distribute more than 50 grams of crack cocaine, and 5 years consecutive under Count Four – possession of a firearm in furtherance of a drug trafficking crime.

On March 17, 2009, Petitioner filed a motion to vacate his sentence under 28 U.S.C. § 2255, asserting ineffective assistance of counsel. The United States filed a written response.

On June 4, 2009, Magistrate Judge Mona Majzoub issued a Report and Recommendation (R&R) denying Petitioner's Motion .

On June 19, 2009, Petitioner filed objections to the R&R and on September 18, 2009, a Motion to Supplement his §2255 Motion.

On September 21, 2009, this Court adopted the Report and Recommendation of Magistrate Judge Majzoub and denied Petitioner's §2255 Motion.

On January 15, 2010, Petitioner filed a Motion for Amendment and Supplement to Petitioner's §2255 Appendix Exhibits. This Court denied the motion as untimely on January 27, 2010.

On February 18, 2010, Petitioner filed a "Motion . . . Sua Sponte Pursuant to Fed.R.Civ.P. 60(b)(1) or Alternative Nunc Pro Tunc or Reconsideration" in this Court. That same day, he also filed a notice of appeal in the United States Court of Appeals for the Sixth Circuit seeking to appeal from this Court's judgment of September 21, 2009, and order of January 27, 2010.

On March 3, 2010, Petitioner filed in this Court a Motion for Compliance with Federal Rule of Civil Procedure 52.

Petitioner's February 18, 2010 Motion seeks, as to both Claims One and Two reinstatement of his §2255 appeal rights. (Pp. 2-3)

Petitioner contends, *inter alia*, that he did not timely receive the Court's previous orders denying his §2255 petition.

The Court will grant Petitioner's request and permit him to timely appeal to the Sixth Circuit. Indeed, the Court notes that Petitioner already appealed to the Sixth Circuit on February 18, 2010.

Accordingly, assuming that after an appeal was filed, on February 18, 2010, that this Court maintains jurisdiction to rule on Petitioner's instant F.R.Civ.P. 60(b)(1) motion, the Court will grant his request for §2255 appeal rights.

The Court denies Petitioner's March 3, 2010 Motion for Compliance With F.R.Civ.P.52 because that is not applicable to the instant case. Rule 52 applies to bench trials or motions.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: July 21, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on July 21, 2010.

s/Denise Goodine
Case Manager